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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,041	08/01/2006	Bogdan Moraru	HUBR-1298	3661
24972	7590	11/19/2009		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
666 FIFTH AVE			MESH, GENNADIY	
NEW YORK, NY 10103-3198				
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			11/19/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/588,041

**Applicant(s)**

MORARU ET AL.

**Examiner**

GENNADIY MESH

**Art Unit**

1796

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 20 - 38.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Vasu Jagannathan/  
Supervisory Patent Examiner, Art Unit 1796

/Gennadiy Mesh/  
Examiner, Art Unit 1796

Continuation of 11, does NOT place the application in condition for allowance because:

1. No amendments to Claims 20 - 38 were presented by Applicant.

2. Applicant's arguments related to Claims 20 - 38 rejected over Albrecht combined with Shendy based on following statement :

"The present invention relates to compositions with improved storage stability". At page 5, 3rd paragraph of the Office Action the Examiner argues that due to a covalent binding of the defoamer to the polymer, particularly stable defoamer dispersant compositions are obtained. Thus, according to the Examiner, there is an incentive to combine Albrecht and Shendy. However, the indications concerning stability in paragraph [0011] of Shendy refer to the essential amine solubilizing agents, which are used to stabilize non-water soluble defoamers and which are not directed to dispersants. According to Shendy, the use of dispersants is optional, and the publication does not contain any motivation to obtain stable defoamer dispersant compositions by inserting defoaming units into the flowing agent.

This Argument was found unpersuasive for following reasons:

1. Shendy in paragraph [0011] teaches : Amine solubilizing agents can be combined with water insoluble defoamers and dispersants for cementitious compositions to provide an admixture for cementitious compositions that is stable over time. The resulting admixture has long term storage stability so that the admixture does not need to be mixed prior to use at the work site.

Thus, Shendy teaches that incorporating of defoamers and dispersants provide stability to cementitious compositions, but not stability to non-water soluble defoamers as argued by Applicant.

2. Motivation to combine Albrecht and Shendy was clearly stated in preceding Office action and reinstated herein for Applicant's convenience: copolymers disclosed by Albrecht comprising substantially same structural units as it claims by Applicant in Claim 20: i) from 51 to 95 mol % of structural units (Ia) or (Ib) or (Ic) - see column 2, lines 43 - 65 - this unit is identical to unit a) claimed by Applicant ii) from 1 to 48.9 mol.% of the unit represent by structural formula II - see column 3, lines 10 - 24 - this unit has same chemical structure, but different molecular weight or degree of polymerization n from 0 to 200 of ethylene oxide groups compare with degree of polymerization from 250 to 500 in unit b) claimed by Applicant in Claim 1. iii) from 0.1 to 5 mol% of identical units IIIa or IIIb - see column 3, lines 25 - 55. Thus, the difference between copolymer claimed by Applicant and copolymer disclosed by Albrecht is that polyalkylene oxide in side chain (see compound of formula II) has higher degree of polymerization.

However, Shendy teach, that polyalkylene oxide moiety that functions as a defoamer (see [0028]) incorporated in insoluble defoamer dispersant compositions (copolymer of substantially same structure see [0067] as it claimed by Applicant), can provide (see [0011]) an admixture for cementitious compositions that is stable over time. The resulting admixture has long term storage stability so that the admixture does not need to be mixed prior to use at the work site. Note, that polyalkylene oxide used by Shendy may have degree of polymerization up to 400 and higher. (see [0072]). Therefore, it would be obvious to one of ordinary skill to modify copolymer disclosed by Albrecht by incorporating polyalkylene oxide with degree of polymerization up to 400 per teaching of Shendy.

Based on reasons above, Applicant's arguments were found unpersuasive.

/GM/